

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE W. BROWN

Plaintiff,

-against-

Index# 08 CV 1093
LMM
Pittman, M.J.

THE BROOKDALE HOSPITAL MEDICAL CENTER,
NEW FRANKLIN REHABILITATION & HEALTH
CARE FACILITY, LLC, FRANKLIN CENTER FOR
REHABILITATION & NURSING, INC., FRANKLIN
CENTER FOR REHABILITATION & NURSING,
ISRAEL SHERMAN, WILLIAM DUKE, M.D., and
THE NEW YORK HOSPITAL MEDICAL CENTER
OF QUEENS,

*Notice of Motion to
Strike Answer of the
New Franklin
Defendants*

Defendants,
-----X

PLEASE TAKE NOTICE that the Plaintiff, **GEORGE W. BROWN** by his attorneys, **LEAHEY & JOHNSON, P.C.**, upon the Declaration of **CHRISTOPHER DELAMERE CLARKE, ESQ.**, all the exhibits annexed thereto and the Memorandum of Law, will bring a motion for an Order pursuant to Rule 37(b)(2)(C) of the Federal Rules of Civil Procedure 1) striking the Answer of defendants **New Franklin Rehabilitation & Health Care Facility, LLC, Franklin Center for Rehabilitation & Nursing, Inc., and Franklin Center for Rehabilitation & Nursing** on the grounds that the Plaintiff has been unduly prejudiced and his case significantly delayed due to the defendants' long history of willful and contumacious conduct, bad faith and fault in inexcusably delaying the completion of discovery; in failing to respond to Plaintiff's Supplemental Demand for Documents from New

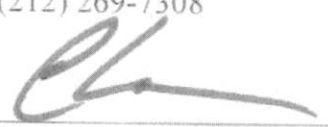
Franklin dated August 12, 2009, and Plaintiff's Second Demand for Documents from New Franklin dated November 20, 2009; in failing to comply with the Order of this Court dated December 21, 2009; in failing to comply with this Court's directive dated January 29, 2010, to respond to Plaintiff's demands; 2) and upon striking the Answer directing the Clerk to enter a default in favor of Plaintiff; and 3) for such other and further relief as the court deems justified under the circumstances.

Dated: New York, New York
February 8, 2010

Yours, etc.,

LEAHEY & JOHNSON, P.C.
Attorneys for Plaintiff
GEORGE W. BROWN
120 Wall Street, Suite 2220
New York, New York 10005
(212) 269-7308

BY:


Christopher Delamere Clarke
(CDC-6160)

TO:

Kopff, Nardelli & Dopf, LLP
Attorneys for Defendants
NEW FRANKLIN REHABILITATION & HEALTH CARE FACILITY, LLC
FRANKLIN CENTER FOR REHABILITATION & NURSING, INC.
FRANKLIN CENTER FOR REHABILITATION & NURSING
WILLIAM DUKE, M.D.

ISRAEL SHERMAN
440 Ninth Avenue
New York, New York 10001

Martin Clearwater & Bell LLP
Attorneys for Defendant
BROOKDALE HOSPITAL
220 East 42nd Street
New York, NY 10017-5842

Wagner, Doman & Leto, P.C.
Attorneys for Defendant
NY HOSPITAL MEDICAL CENTER OF QUEENS
227 Mineola Blvd.
Mineola, NY 11501

CERTIFICATE OF SERVICE

I, hereby certify that on February 8, 2010 of a true and correct copy of:

**NOTICE OF MOTION TO STRIKE ANSWER OF THE NEW FRANKLIN DEFENDANTS
AND DECLARATION IN SUPPORT**

was served upon opposing counsel by depositing it in the United States mail in a properly addressed envelope with sufficient postage, addressed as follows:

TO:

KOPFF, NARDELLI & DOPF, LLP

Attorneys for Defendants
*NEW FRANKLIN REHABILITATION
& HEALTH CARE FACILITY, LLC,
FRANKLIN CENTER FOR REHABILITATION
& NURSING, INC., FRANKLIN CENTER FOR
REHABILITATION & NURSING, WILLIAM
DUKE, M.D. and ISRAEL SHERMAN*
440 Ninth Avenue
New York, New York 10001

MARTIN CLEARWATER & BELL, LLP

Attorneys for Defendant
BROOKDALE HOSPITAL
220 East 42nd Street
New York, New York 10017-5842

WAGNER, DOMAN & LETO, P.C.

Attorneys for Defendant
*NY HOSPITAL MEDICAL CENTER
OF QUEENS*
227 Mineola Boulevard
Mineola, New York 11501

LEAHEY & JOHNSON, P.C.

Attorneys for Defendant
GEORGE W. BROWN
120 Wall Street, Suite 2220
New York, New York 10005
(212) 269-7308

BY: 

Christopher Delamere Clarke
(CDC-6160)

CERTIFICATE OF SERVICE

I, hereby certify that on February 8, 2010 of a true and correct copy of:

MEMORANDUM OF LAW

was served upon opposing counsel by depositing it in the United States mail in a properly addressed envelope with sufficient postage, addressed as follows:

TO:

KOPFF, NARDELLI & DOPF, LLP

Attorneys for Defendants
*NEW FRANKLIN REHABILITATION
& HEALTH CARE FACILITY, LLC,
FRANKLIN CENTER FOR REHABILITATION
& NURSING, INC., FRANKLIN CENTER FOR
REHABILITATION & NURSING, WILLIAM
DUKE, M.D. and ISRAEL SHERMAN*
440 Ninth Avenue
New York, New York 10001

MARTIN CLEARWATER & BELL, LLP

Attorneys for Defendant
BROOKDALE HOSPITAL
220 East 42nd Street
New York, New York 10017-5842

WAGNER, DOMAN & LETO, P.C.

Attorneys for Defendant
*NY HOSPITAL MEDICAL CENTER
OF QUEENS*
227 Mineola Boulevard
Mineola, New York 11501

LEAHEY & JOHNSON, P.C.
Attorneys for Defendant
GEORGE W. BROWN
120 Wall Street, Suite 2220
New York, New York 10005
(212) 269-7308

BY: 

Christopher Delamere Clarke
(CDC-6160)